

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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RAMON APONTE,

Movant,

O R D E R

- against -

16 Civ. 3511 (NRB)
02 Cr. 1082-4(NRB)

UNITED STATES OF AMERICA,

Respondent.

-----X
NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

WHEREAS movant Ramon Aponte ("Aponte") pled guilty in 2003 to two counts of using or brandishing a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii), and one count of using a communication facility in furtherance of a drug felony in violation of 21 U.S.C. § 843(b); and

WHEREAS on January 9, 2004, Aponte was sentenced principally to 432 months' imprisonment; and

WHEREAS on May 10, 2016, Aponte, acting pro se, filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, on the grounds that after Johnson v. United States, 135 S. Ct. 2551 (2015), neither of the robberies underlying his two § 924(c)(1)(A) convictions qualify as a "crime of violence" as defined in 18 U.S.C. § 924(c)(3); and

WHEREAS on June 8, 2016 this Court issued a standing order, In re: Petitions under 28 U.S.C. §§ 2255 and 2241 in Light of

Johnson v. United States, 16-MC-217 (CM) (S.D.N.Y. June 8, 2016), permitting counsel appointed for Johnson matters to file initial “placeholder” petitions to be supplemented on a future date; and

WHEREAS the aforementioned standing order suggested that individual judges defer any consideration of such petitions until the filing of supplemental briefs or until a briefing schedule is requested by a party or parties; and

WHEREAS on June 15, 2016 Federal Defenders of New York appeared on behalf of Aponte in connection with his petition under 28 U.S.C. § 2255 based on Johnson v. United States; and

WHEREAS on June 21, 2016 this Court entered an order stating, inter alia, that it deemed Aponte’s May 10, 2016 motion to be an initial petition under the standing order; and

WHEREAS the Court’s June 21, 2016 order directed the parties to submit a proposed briefing schedule that was to include any anticipated supplemental brief filed by Federal Defenders on Aponte’s behalf; and

WHEREAS on August 16, 2016, Aponte, acting pro se, filed a supplemental brief in support of his § 2255 petition; and

WHEREAS on August 16, 2016, Aponte also filed a pro se motion for bail pending the resolution of his § 2255 petition; and

WHEREAS this Court’s August 22, 2016 order denying Aponte’s motion for bail stated, inter alia, that it appeared that the

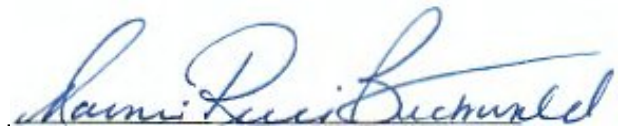
claims underlying Aponte's § 2255 petition may have been precluded by then-recent binding authority; and

WHEREAS as of today's date, the parties have neither submitted the proposed briefing schedule requested in the Court's June 21, 2016 order nor made any other substantive filings in this matter; it is hereby

ORDERED that each party file within three weeks a letter of not more than three pages identifying either (1) controlling authority that the party believes is now dispositive of the precise legal issue(s) raised by Aponte's petition;¹ or (2) pending cases, if any, that might be resolved in a manner that would yield such authority.

SO ORDERED.

Dated: New York, New York
July 27, 2020

A handwritten signature in blue ink, reading "Naomi Reice Buchwald".

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

¹ In the Court's assessment, the primary issue appears to be whether New York first degree robbery, N.Y. Penal Law § 160.15, constitutes a "crime of violence" under 18 U.S.C. § 924(c).

A copy of the foregoing has been mailed to:

Ramon Aponte, 52538-054
USP Coleman I
U.S. PENITENTIARY
P.O. BOX 1033
COLEMAN, FL 33521